

1 HONORABLE RONALD B. LEIGHTON
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 DAVID DENNIS, individually and on
11 behalf of all other similarly situated,

12 Plaintiff,

13 v.

14 AMERIGROUP WASHINGTON INC.,
15 a Washington corporation,

16 Defendant.

17 CASE NO. 3:19-cv-05165-RBL

18 ORDER

19 DKT. # 66

20 THIS MATTER is before the Court on Plaintiff David Dennis's Motion for
21 Reconsideration of One Paragraph of the Court's Order Granting in Part and Denying in Part
22 Defendant's Motion for Summary Judgment. Dkt. # 66; Dkt. # 64.

23 Under Local Rule 7(h)(1), motions for reconsideration are disfavored, and will ordinarily
24 be denied unless there is a showing of (a) manifest error in the ruling, or (b) facts or legal
authority which could not have been brought to the attention of the court earlier, through
reasonable diligence. The term "manifest error" is "an error that is plain and indisputable, and
that amounts to a complete disregard of the controlling law or the credible evidence in the
record." Black's Law Dictionary 622 (9th ed. 2009).

1 Reconsideration is an “extraordinary remedy, to be used sparingly in the interests of
2 finality and conservation of judicial resources.” *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d
3 877, 890 (9th Cir. 2000). “[A] motion for reconsideration should not be granted, absent highly
4 unusual circumstances, unless the district court is presented with newly discovered evidence,
5 committed clear error, or if there is an intervening change in the controlling law.” *Marlyn*
6 *Natraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009). Neither
7 the Local Civil Rules nor the Federal Rule of Civil Procedure, which allow for a motion for
8 reconsideration, is intended to provide litigants with a second bite at the apple. A motion for
9 reconsideration should not be used to ask a court to rethink what the court had already thought
10 through — rightly or wrongly. *Defenders of Wildlife v. Browner*, 909 F.Supp. 1342, 1351 (D.
11 Ariz. 1995). Mere disagreement with a previous order is an insufficient basis for reconsideration,
12 and reconsideration may not be based on evidence and legal arguments that could have been
13 presented at the time of the challenged decision. *Haw. Stevedores, Inc. v. HT & T Co.*, 363 F.
14 Supp. 2d 1253, 1269 (D. Haw. 2005). “Whether or not to grant reconsideration is committed to
15 the sound discretion of the court.” *Navajo Nation v. Confederated Tribes & Bands of the Yakima*
16 *Indian Nation*, 331 F.3d 1041, 1046 (9th Cir. 2003).

17 Here, Dennis asks the Court to reconsider an alternate basis for the Court’s ruling that
18 Amerigroup’s “Benefit Retention Call” did not violate the TCPA because it did not require
19 express consent. Dkt. # 64 at 14. First and foremost, the Court determined that the call was
20 exempt from the TCPA’s requirements because it qualified under the law’s emergency
21 exemption. *Id.* at 13 (“[T]he Court does find that the ‘Benefit Retention Call’ was made for
22 emergency purposes.”). As an alternate basis for this outcome, the Court also cited the FCC’s
23 *2015 Order*, 30 F.C.C. Rcd. 7961, 8022-23 (2015), in which the agency stated that “callers who
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1 make calls without knowledge of reassignment and with a reasonable basis to believe that they
2 have valid consent to make the call should be able to initiate one call after reassignment.” Dennis
3 contends that this so-called “one-call safe harbor” was set aside as arbitrary and capricious by the
4 D.C. Circuit in *ACA Int’l v. Fed. Commc’ns Comm’n*, 885 F.3d 687, 706-09 (D.C. Cir. 2018).

5 Dennis is correct that the FCC’s “one-call safe harbor” was set aside and courts have
6 since relied on regular tools of statutory interpretation to determine whether a single call to a
7 reassigned number can trigger TCPA liability, at least until the FCC weighs in again. *See*
8 *Samson v. United Healthcare Servs., Inc.*, No. C19-0175JLR, 2019 WL 2173454, at *4 (W.D.
9 Wash. May 20, 2019) (collecting cases). The Court did not decide this issue on summary
10 judgment and, given that the “Benefit Retention Call” was for emergency purposes, it does not
11 need to decide it now. To the extent that Dennis requests that the Court’s Order on summary
12 judgment be amended to correct this error, his Motion is GRANTED. However, the Court is not
13 reconsidering the Order’s outcome with respect to any issue.

14 IT IS SO ORDERED.

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16 Dated this 2nd day of March, 2020.

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Ronald B. Leighton
Ronald B. Leighton
United States District Judge